

Introduced by Senator Blakeslee

February 18, 2011

An act to add Section 243.93 to the Penal Code, relating to battery.

LEGISLATIVE COUNSEL'S DIGEST

SB 794, as introduced, Blakeslee. Battery: gassing.

Existing law establishes the State Department of Mental Health, provides for the administration of state hospitals, and provides for the involuntary confinement of certain individuals in those state hospitals, including persons who have been found not guilty of a charge by reason of insanity, who have been found incompetent to stand trial by a judge, or have been determined, as a result of a mental disorder, to be a danger to themselves or others.

Existing law provides that every person confined in a local detention facility, state prison, or under the jurisdiction of the Division of Juvenile Facilities of the Department of Corrections and Rehabilitation, who commits a battery upon the person of a peace officer by "gassing," as defined, is guilty of aggravated battery.

This bill would provide that a person confined to a state hospital who commits battery upon the person of a peace officer or employee of a state hospital by gassing is guilty of aggravated battery, punishable by imprisonment in county jail or state prison for 2, 3, or 4 years.

The bill would also require the State Department of Mental Health to submit a report to the Legislature by January 1, 2016, regarding gassing incidents at state hospitals.

By creating a new crime, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.

State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 243.93 is added to the Penal Code, to
2 read:

3 243.93. (a) Every person confined in a state hospital who
4 commits battery by gassing upon the person of any peace officer,
5 as defined in Chapter 4.5 (commencing with Section 830) of Title
6 3 of Part 2, or employee of the state hospital is guilty of aggravated
7 battery and shall be punished by imprisonment in a county jail or
8 by imprisonment in the state prison for two, three, or four years.

9 (b) For purposes of this section, “gassing” means intentionally
10 placing or throwing, or causing to be placed or thrown, upon the
11 person of another, any human excrement or other bodily fluids or
12 bodily substances or any mixture containing human excrement or
13 other bodily fluids or bodily substances that results in actual contact
14 with the person’s skin or membranes.

15 (c) As used in this section, “director” shall mean the director of
16 the state hospital.

17 (d) The director, or any other person in charge of the state
18 hospital, as the case may be, shall use every available means to
19 immediately investigate all reported or suspected violations of
20 subdivision (a), including, but not limited to, the use of forensically
21 acceptable means of preserving and testing the suspected gassing
22 substance to confirm the presence of human excrement or other
23 bodily fluids or bodily substances. If there is probable cause to
24 believe that the individual has violated subdivision (a), the director
25 may, when he or she deems it medically necessary to protect the
26 health of an officer or employee who may have been subject to a
27 violation of this section, order the individual to receive an
28 examination or test for hepatitis or tuberculosis or both hepatitis
29 and tuberculosis on either a voluntary or involuntary basis
30 immediately after the event, and periodically thereafter as

1 determined to be necessary by the director in order to ensure that
2 further hepatitis or tuberculosis transmission does not occur. These
3 decisions shall be consistent with an occupational exposure as
4 defined by the federal Centers for Disease Control and Prevention.
5 The results of any examination or test shall be provided to the
6 officer or employee who has been subject to a reported or suspected
7 violation of this section. Nothing in this subdivision shall be
8 construed to otherwise supersede the operation of Title 8
9 (commencing with Section 7500) of Part 3. Any person performing
10 tests, transmitting test results, or disclosing information pursuant
11 to this section shall be immune from civil liability for any action
12 taken in accordance with this section.

13 (e) The director or other person in charge of the state hospital
14 shall refer all reports for which there is probable cause to believe
15 that the individual has violated subdivision (a) to the local district
16 attorney for prosecution.

17 (f) Nothing in this section shall preclude prosecution under both
18 this section and any other provision of law.

19 SEC. 2. (a) The State Department of Mental Health shall report
20 to the Legislature, by January 1, 2016, its findings and
21 recommendations on gassing incidents at state hospitals and the
22 medical testing authorized by this section. The report shall be
23 submitted in compliance with Section 9795 of the Government
24 Code. The report shall include, but not be limited to, all of the
25 following:

26 (1) The total number of gassing incidents at each state hospital
27 up to the date of the report.

28 (2) The disposition of each gassing incident, including the
29 administrative penalties imposed, the number of incidents that are
30 prosecuted, and the results of those prosecutions, including any
31 penalties imposed.

32 (3) A profile of the individuals who commit the aggravated
33 batteries, including the number of individuals who have one or
34 more prior serious or violent felony convictions.

35 (4) Efforts that the department has taken to limit these incidents,
36 including staff training and the use of protective clothing and
37 goggles.

38 (5) The results and costs of the medical testing authorized by
39 this section.

1 (b) This section shall remain in effect only until January 1, 2017,
2 and as of that date is repealed, unless a later enacted statute that
3 is enacted before January 1, 2017, deletes or extends that date.

4 SEC. 3. No reimbursement is required by this act pursuant to
5 Section 6 of Article XIII B of the California Constitution because
6 the only costs that may be incurred by a local agency or school
7 district will be incurred because this act creates a new crime or
8 infraction, eliminates a crime or infraction, or changes the penalty
9 for a crime or infraction, within the meaning of Section 17556 of
10 the Government Code, or changes the definition of a crime within
11 the meaning of Section 6 of Article XIII B of the California
12 Constitution.